

M&C: G-2101

CONTRACT

No. 7454

7454

Name Carter Publications,
Inc.

FOR Reunioner Inc
Schedule - Encroachment
in Public Row

Date Approved By Council

11/6/72

Filed 18th day of April

19 73

Ray A. Bateman
City Secretary mbc

44-173-27

4/18/73 Green, Sign

City of Fort Worth, Texas

Mayor and Council Communication

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Chapter 45 of the Building Code (Ordinance No. 6374) specifies conditions under which encroachments in the public right-of-way may be constructed including requirements for liability insurance, execution of a consent agreement with the City, and payment of inspection fees.

Present Fee Schedule

On May 25, 1970 (M&C G-1573), a policy was adopted governing the encroachment of signs, marquees, etc., into public property. This policy regulates the height at which these items may be placed and the distance they may extend into the right-of-way. It further sets the inspection fees for such encroachments at \$75 initially and \$25 annually thereafter for the term of the consent agreement.

Inspection fees for encroachments such as over-street and below-street building spaces have been established by City Council action for consent agreements presented to the City Council for its approval. A list of these agreements currently in effect and the annual fees charged is attached.

On April 19, 1971 (M&C G-1964), a consent agreement was approved with the Fort Worth National Bank for various over-head and under-street encroachments to be constructed as part of the bank's new building. The fees charged were recommended by a City staff committee, and the Council was advised at that time that the staff would study existing encroachment policy and recommend a uniform, equitable method of fixing fees, for all current and future encroachments, commensurate with the costs of processing applications and performing annual inspections.

Costs Incurred

Inspection and administrative costs for processing encroachments are estimated as follows:

Processing of Original Request

Building Division: Processing of Application	\$15
Legal, Administrative and City Council Review and Action	\$45
Processing, Filing and Recording	\$40
Total Expense	\$100

Annual Inspection Costs

Tax Department: Filing and Processing	\$10
Building Division: Filing and Processing	\$10
Inspection: Building Division and Fire Prevention	\$30
Total	\$50

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For small encroachments such as signs the fees currently being charged are no longer sufficient to cover the costs, while those being charged for overhead building structures generally exceed the actual costs. It is therefore proposed to revise the schedule of fees for encroachments so that charges are commensurate with the cost of services performed.

For overhead or understreet structures, the Courts have ruled that the City of Fort Worth may not charge fees based on the value of the space used, but it may be entitled to reimbursement in the form of an inspection fee for expenses of inspection, supervision, maintenance, or other proper functions of the City caused by the encroachment. The proposed schedule increases the fees for signs, marquees, overhead wires, etc., but generally reduces those for building extensions to a level consistent with the Court ruling. Reduction of the fee schedule is consistent with the concepts of the Halprin Plan for future development of the Central Business District. This plan proposes to help offset the obstacles to redevelopment of the CBD resulting from small City blocks by encouraging over and under street connections of private property.

The annual inspection fee for the Group Two encroachments listed below is less than the Group One encroachments because these items are given only on-site checks of the condition of the pavement above the conduit, condition of the wire covering, etc.

In order to more accurately reflect the actual costs of inspections for building extensions above or below the right-of-way, a sliding scale is proposed for both the initial and annual fees for such structures as follows:

Type of Encroachment	Application Fee		Annual Inspection Fee	
	Present	Proposed	Present	Proposed
Group 1. Awnings, marquees signs	\$75.00	\$100	\$25.00	\$50.00
Group 2. Overhead wires, underground conduits pipes and boxes	50.00	100.00	10.00	30.00
Group 3. Others, including overhead walkways, under-or-over-street building extension	Negotiated	.005 per cubic foot; minimum of \$100 rounded to nearest \$10	Negotiated	1/10 of applica- tion fee, minimum of \$50 rounded to near- est \$10

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Effect of Existing Encroachment Agreements

The staff has reviewed existing consent agreements for encroachments in the public right-of-way to determine the effect of the proposed fee schedule. As a result of these changes, annual revenue will be reduced from approximately \$29,000 to \$1,900.

It is proposed that the staff be authorized to prepare amendments to existing consent agreements and apply the revised fee schedule described above; and further, that the staff be authorized to take necessary steps to obtain consent agreements for all other existing encroachments for which no agreements exist.


Recommendations

It is recommended:

- 1) That an ordinance be adopted establishing the schedule of inspection fees for encroachments in the public right-of-way as set forth above;
- 2) That the application of the new fee schedule be authorized on all existing encroachments where no consent agreement exists and on all consent agreements currently in force, with the amended consent agreements becoming effective on the annual renewal date, and
- 3) That the City Manager be authorized to execute the amended consent agreements and consent agreements on existing encroachments not covered by an agreement.

RNL:mj

Attach,

SUBMITTED BY:  CITY MANAGER	DISPOSITION BY COUNCIL: <input checked="" type="checkbox"/> APPROVED <input type="checkbox"/> OTHER (DESCRIBE)	PROCESSED BY CITY SECRETARY DATE
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CONSENT AGREEMENT

THE STATE OF TEXAS {
COUNTY OF TARRANT }



THIS AGREEMENT made and entered into the 1st day of January, 1973, by and between the City of Fort Worth, a municipal corporation of Tarrant County, Texas, acting herein by and through R. N. Line, its duly authorized City Manager, and Carter Publications, Inc.

400 W. 7th Street

Fort Worth, Texas

hereafter referred to as Grantee.

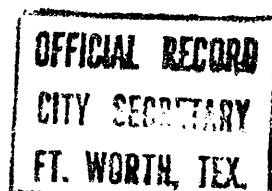
W I T N E S S E T H:

1.

For and in consideration of the payment by Grantee of the annual charges set out below and the true and faithful performance of the mutual covenants herein contained, the City of Fort Worth hereby grants to Grantee the permission to encroach upon, use and occupy portions of the space on and/or above the public streets for the purposes as described and located in Exhibit "A" attached hereto, said Exhibit "A" is incorporated herein by reference and is to be considered as a part of this instrument.

2.

All construction, maintenance and operation in connection with such encroachment and use shall be performed in strict compliance with the Charter, Ordinances



and Codes of the City of Fort Worth and in accordance with the directions of the Director of Public Works of said City. All plans and specifications therefor shall be subject to the prior approval of the Director of Public Works, but such approval shall not relieve Grantee of responsibility for concept, design and computation in the preparation of such plans and specifications.

3.

Upon completion of construction and thereafter, there shall be no encroachments in, under, on or above the surface area of the streets and sidewalks, involved, except as shown on Exhibit "A" referred to in paragraph 1.

4.

The Grantee, at no expense to the City, shall make proper provision for the relocation and/or installation of any utilities affected by such encroachment and use including the securing of approval and consent from the utility companies and the appropriate agencies of the State and its political subdivisions. In the event any installation, reinstallation, relocation or repair of any existing or future utility or improvements owned or constructed by or on behalf of the public or at public expense is made more costly by virtue of the construction, maintenance or existence of such encroachment and use, Grantee shall pay to the City an additional amount equal to such additional cost as determined by the Director of Public Works of the City of Fort Worth.

5.

In order to defray all costs of inspection and supervision which the City of Fort Worth has incurred or might incur as a result of the construction, reconstruction or maintenance of the encroachments and uses provided for by this contract and

agreement, Grantee binds and obligates itself, its heirs and assignees to pay to the City of Fort Worth at the time this agreement is executed the sum of _____
\$110.00/214,800 cu. ft. Dollars (\$ 110.00); and Grantee further agrees, binds and obligates itself, its heirs and assigns to pay to the City of Fort Worth the sum of One hundred ten Dollars (\$ 110.00) per annum for each year thereafter during the term hereof, the first such annual payment becoming due on or before the first day of January, 1974, and a like amount becoming due and payable on or before the first day of each January thereafter during the term hereof. In the event that the City Council of the City of Fort Worth determines that the amount of any such annual payment has not defrayed, or will not defray, all of the costs of inspection and supervision, the City may, as often as necessary, adjust the amount of such annual payments to be made by Grantee; and in the event of such adjustment of the amount of said annual payments, Grantee covenants and agrees to pay to the City on or before the first day of January of each year during the remaining term of this contract, or until another such adjustment, the amount of the adjusted annual payments.

6.

The initial term of this agreement shall be twenty-five (25) years, commencing on the date this agreement is executed.

7.

Upon the termination of this agreement for any reason whatsoever, Grantee shall, at the option of the City and at no expense to the City, restore the public streets and adjacent supporting structures to a condition acceptable to the Director of Public Works and in accordance with then existing City specifications.

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It is further understood and agreed between the parties hereto that the legal title to city streets, which includes the portions of such streets used and encroached upon as described herein, belongs to the State, and the City of Fort Worth exercises such powers over the streets as have been delegated to it by the Constitution of the State of Texas or by the Legislature; that the City of Fort Worth holds the streets as trustee for the Public; and that the City of Fort Worth cannot contract away its duty and its legislative power to control the streets for the use and benefit of the public. It is accordingly agreed that if the governing body of the City of Fort Worth, to wit, its City Council, should at any time during the term hereof determine in its sole discretion to use or cause or permit the said portions of the streets to be used for any other public purpose, including but not being limited to underground, surface or overhead communication, drainage, sanitary sewerage, transmission of natural gas or electricity, or any other public purpose whether presently contemplated or not, then this agreement shall be automatically cancelled and terminated as provided in the preceding paragraph.

9.

Grantee agrees to comply fully with all applicable federal, state and municipal laws, statutes, ordinances, codes or regulations in connection with the construction, operation and maintenance of said encroachments and uses.

10.

Grantee agrees to pay promptly when due all fees, taxes or rentals provided for by this agreement or any federal, state or local statute, law or regulation.

11.

Grantee covenants and agrees to indemnify, and does hereby indemnify, hold harmless and defend, the City of Fort Worth, its agents, servants or employees, from and against any and all claims for damages or injuries to persons or property of whatsoever kind or character, whether real or asserted, arising out of or incident to the construction, maintenance, occupancy, use, existence or location of the said encroachments and uses; and Grantee hereby assumes all liability and responsibility for injuries, claims or suits for damages to persons or property, of whatsoever kind or character, whether real or asserted, occurring during the term of this agreement and arising out of or by reason of the construction, maintenance, occupancy, use, existence or location of the said encroachments and uses.

12.

Grantee agrees to furnish proof that he has secured and paid for a policy of public liability insurance covering all public risks related to the proposed use and occupancy of public property as located and described in Exhibit "A".

The amounts of such insurance shall be not less than the following:

Property damage, per accident	\$ 50,000
Personal injury or death, per person	100,000
Personal injury or death, per accident	300,000

with the understanding of and agreement by Grantee that such insurance amounts may be revised upward at Grantor's option and that Grantee covenants and agrees to so revise such amounts within thirty (30) days, following notice to Grantee of such requirement.

Grantee agrees, binds and obligates itself, its heirs and assignees to maintain and keep in force such liability insurance; proof of maintenance of such liability insurance shall be submitted with the annual payments under the same conditions and time as set out in Section 5. Each such insurance policy shall provide that it cannot be cancelled or amended without a minimum of thirty (30) days' advance notice to the City.

13.

Grantee agrees to deposit with the City of Fort Worth when this agreement is executed a sufficient sum of money to be used to pay necessary fees to record this consent agreement in its entirety and in the deed records of Tarrant County, Texas. After being so recorded, the original hereof shall be returned to the City Secretary of the City of Fort Worth, Texas.

14.

This agreement shall be binding upon the parties hereto, their successors and assigns.

EXECUTED this 1st day of January, 19 73.

CITY OF FORT WORTH

By

R. N. Line

R. N. Line
City Manager

ATTEST:

Jan. W. Line
City Secretary

APPROVED AS TO FORM AND LEGALITY:

S. G. Johnson
City Attorney

ATTEST:

R. H. Singer

Carter Publications, Inc.

By

For Bill. Carter

INSURANCE COMPANY

Great American Insurance Company



Wm. Rigg Co.
INSURANCE, REAL ESTATE SINCE 1887

FORT WORTH / ARLINGTON / MID-CITIES
P. O. BOX 936 FORT WORTH, TEXAS 76101

CERTIFICATE OF INSURANCE

This Certificate of Insurance neither affirmatively, nor negatively, amends, extends or alters the coverage of the policies. In the event of cancellation of any of the policies or coverages listed below, 10 days notice will be given to the certificate holder.

This Certificate is issued at the request of:

☒ City of Fort Worth, Texas
Name Public Works Department
Address 1000 Throckmorton Street
Fort Worth, Texas 76102

Named Insured and Address

Carter Publications, Inc.
Star-Telegram Charities, Inc.
400 West Seventh St.
Fort Worth, Texas 76101

Location of operations for which this certificate applies.

Encroachment at 400 West 7th Street

KINDS OF INSURANCE * INSURANCE AFFORDED ONLY FOR HAZARDS INDICATED BY X	*	POLICY NUMBER	EFFECTIVE DATE	EXPIRATION DATE	LIMITS OF LIABILITY
(a) Workmen's Compensation and Employers' Liability	X				Coverage A—Statutory Coverage B (\$100,000)
(b) General Liability					
Bodily Injury					\$ Each Person
Premises-Operations	X	7035719	1/1/73	1/1/76	\$300,000 Each Occurrence
Independent Contractors	X				\$300,000 Aggregate-Products
Products	X				
Property Damage	X				\$100,000 Each Occurrence
Premises-Operations	X				\$100,000 Aggregate-Prem. Oper.
Independent Contractors	X				\$100,000 Aggregate-Protective
Products	X				\$100,000 Aggregate-Products
(c) Contractual Liability					
Bodily Injury	X	7035719	1/1/73	1/1/76	\$ Each Person
Property Damage	X				\$300,000 Each Occurrence
					\$100,000 Each Occurrence
					\$100,000 Aggregate-Contractual
(d) Automobile Liability					
Bodily Injury					
Owned Automobiles					\$ Each Person
Hired Automobiles					\$ Each Occurrence
Non-owned Automobiles					
Property Damage					
Owned Automobiles					\$ Each Occurrence
Hired Automobiles					
Non-owned Automobiles					
(e) Personal Injury	X	7035719	1/1/73	1/1/76	300,000 ea. person aggregate

Countersigned at Bedford, Texas Date 4/12/73 By [Signature] Authorized Representative
Agency Wm. Rigg Co., 1st. State Bank Bldg., Suite 800 Number _____